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THE DISTRICT OF COLUMBIA TAXICAB COMMISSION MINUTES

REGULAR COMMISSION MEETING

Room 204, 2041 Martin Luther King, Jr., Avenue, SE

Washington, D.C. 20020

WEDNESDAY, NOVEMBER 14, 2007

COMMISSIONERS PRESENT:

Leon J. Swain, Jr.	Chairperson
Sandra C. Allen,	Commissioner
A. Cornelius Baker,	Commissioner
William H. Carter, IV	Commissioner
Stanley W. Tapscott	Commissioner
Theresa N. Travis	Commissioner

STAFF PRESENT

Doreen E. Thompson, Esq. General Counsel

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MINUTES

A. CALL TO ORDER AND DETERMINATION OF QUORUM

Chairperson Leon J. Swain, Jr. called the meeting to order at 10:19 am. There was not a quorum at the opening of the meeting, but with the subsequent attendance of additional Commissioners, a quorum was later determined to be in place, allowing the Commission to take action on items which require a vote.

B. COMMUNICATION FROM THE CHAIRPERSON

1. Task Force Status

Chairperson Swain stated that the Task Force, co-chaired with Council-member Jim Graham, is ready to begin operating and that the membership list has been finalized but he has not yet received a copy. **ACTION ITEM:** Once he has received the final list, it will be distributed.

2. Status of Pre-licensing Examination

Chairperson Swain indicated that he would be meeting with the Education Task Force to figure out what direction needs to be taken as to the content of the test in light of the proposed meter rulemaking.

3. Decriminalizing Loitering by Taxicabs & Discussion Regarding Discrimination by Hotel Employees

- (a) Loitering by Taxicabs Around or in front of hotels, theaters or public buildings

Doreen Thompson, General Counsel, stated that in the DC Taxicab Commission Establishment Act, DC Code § 50-371, loitering is treated as a misdemeanor offense, and the sense of the Commission has been that this should be a civil infraction. In addition, hack inspectors have been issuing tickets which are adjudicated at the Bureau of Traffic Adjudication because there is a fine written for this violation in Title 31 DCMR.

DC Code § 50-371 states that:

The loitering of public cabs and hacks or vehicles of all descriptions around or in front of the hotels, theaters, or public buildings in the District of Columbia, either by stopping, except to take on or discharge a passenger, or unnecessarily slow driving, is hereby prohibited, and any driver of any such cab or hack who willfully causes

the same to loiter either by stopping or slow driving as aforesaid shall be deemed guilty of a misdemeanor and punished in the Superior Court of the District of Columbia by a fine of not less than \$10 nor more than \$40 for such offense. The Council of the District of Columbia is hereby authorized and empowered to make any regulations that may be necessary in furtherance of the purpose of this section, and the Mayor of the District of Columbia is hereby given authority to revoke the license of the driver of any public hack or cab who is convicted of a violation of this section.

VOTE TAKEN: Commissioner Allen moved that the Commission change the penalty for loitering of public cabs, from a misdemeanor to a civil infraction, and that slow driving be defined with consideration to defining it as driving five miles per hour and obstructing traffic or disturbing the flow of traffic. This motion was seconded by Commissioner Travis. The motion was unanimously approved.

In response to an inquiry whether the public would get a chance to comment on the legislation, Doreen Thompson, General Counsel outlined that the legislative process is as follows:

- Once the provision has been drafted, it goes up through the Attorney General's Office for review;
- Once found to be legally sufficient, it is returned to the Chairperson who would transmit it up to the Mayor's Office along with fiscal impact statement;
- The Mayor's Office of Intergovernmental Affairs would then transmit it to the Chairperson of the Council; and
- The Chairperson of the Council would then send it to the Committee on Public Works and Transportation, which is chaired by Councilmember Jim Graham, who would hold a hearing on the legislation, which would provide another opportunity for public comments.

She also suggested that as this legislation is moving, the Task Force on the Commission & the Industry will be operating and there may also be additional changes to taxicab legislation and there will be an opportunity for additional airings.

(b) Discrimination/Preferential Treatment by Hotel Employees

The second paragraph of D.C. Code §50-371, which prohibits discrimination against licensed taxicab drivers by hotel employees on hotel premises, was also discussed. That language reads:

It shall be unlawful for any keeper or proprietor or agent

1 acting for the keeper or proprietor of any licensed hotel
 2 in the District of Columbia, to exclude any District
 3 licensed taxicab driver from picking up passengers at
 4 any hack stand or other location where taxicabs
 5 are regularly allowed to pick up passengers on the
 6 hotel premises.

7
 8 A violation of this provision shall be punishable by a
 9 fine not to exceed \$300.00, or imprisonment for not
 10 more than 90 days or both, for each violation hereof.
 11

12 **Doreen Thompson, General Counsel** raised two concerns that (1) the
 13 section be expanded to include not just violations on the hotel property but
 14 actions by hotel staff which result in preferential treatment even where the
 15 vehicle is on public property; and (2) a civil violation also be added to this
 16 provision which would give the option of it being enforced civilly and
 17 criminally---since criminal cases require a higher evidentiary standard and
 18 require involving either the US Attorney's Office or the Office of the
 19 Attorney General, who will decide whether to proceed with the case. Civil
 20 infractions would allow the Commission's hack inspectors to also issue
 21 tickets for violations.
 22

23 She further recommended that the language could be drafted and presented
 24 for the Commission's consideration at another meeting. **ACTION ITEM:**
 25 **Commissioner Allen** recommended that the language for these provisions
 26 be drafted and presented back to the Commission for discussion.

28 4. **Status of Minutes and Transcripts.**
 29

30 **Doreen Thompson, General Counsel**, indicated that the Commission has
 31 had a number of problems with the accuracy of the transcripts, particularly
 32 from the two meetings at THE ARC where the layout or acoustics appears
 33 to have presented challenges for the transcriber. She indicated that as a
 34 result, on some major items, she will have to go back and ensure that the
 35 transcripts are corrected. This may require her to contact a number of
 36 Commissioners to attempt to verify what was said. She also indicated that
 37 we are behind on a number of Minutes because we have a pretty small staff
 38 and the priorities for the last months have been on meters – putting together
 39 the materials for the survey, getting the recommendation up to the Mayor
 40 and then getting the meter rules in place as directed by the Mayor. She
 41 concluded that we will focus on getting caught up in terms of the minutes,
 42 and certainly immediately will try to get all the transcripts on-line, so that if
 43 someone wants to see what occurred, they at least have that opportunity.
 44

45 5. **Time and Distance Meter Proposed Rulemaking and Special**
 46 **Meeting in December**
 47

48 **Chairperson Swain** mentioned that the rulemaking was on the web site and

that he is seeking comments. A number of Commissioners indicated that they were unaware of this and had not received a copy. Chairperson Swain suggested and it was agreed that to have a special full commission meeting in December which will allow everyone more than ample time to review the document, and this meeting it will be within the 60-day time comment period for the rulemaking. He further stated that the Commissioners and the public will be able to offer recommendations, which will be made part of the official record that will get back to the Mayor, who will make his final decision.

Commissioner Baker inquired whether the Commissioners could get copies of the public comments on the rulemaking and **ACTION ITEM:** **Chairperson Swain** indicated that these will be provided.

(a) Specific Comments on the Meter Rulemaking

Members of the public and a Commissioner provided the following comments:

- The fine of \$1,000.00 for an improperly working meter is too high;
- The number of taxicabs in operation will likely be reduced to 3,000 Cab Drivers soon. You are going to see medallions and the other effect; you will not be an independent. You will be working for someone else, just like you do in Maryland and Virginia.

(b) Impact of Action by Mayoral Order

Commissioner Baker while stating that he supports the Mayor's decision inquired about the impact of the Mayor's Order regarding meters and particularly since it resulted from an attachment to an appropriation bill. He further inquired whether action taken by Mayoral Order could not be subsequently challenged or would sunset with each Mayor, and expressed concern that unless the Order is renewed immediately by the next Mayor, there could be a situation where decisions are not codified into law.

6. Monthly Mailings & Rules Regarding Scheduling Full Commission Meetings

As to monthly mailings, Chairperson Swain stated that the Office will be cutting back on its monthly mailings (approximately 310 individuals are mailed the meeting notices each month) because of the level of budgetary and manpower resources to be allocated to this activity (the Office spends \$3,000.00 a year in postage alone on the mailings) and the limited attendance at the meetings. **ACTION ITEM:** He indicated that the Office will mail out a Calendar with the meeting dates, update it periodically and will also notify through the website.

Public participants voiced concerns as to cutting back on monthly meeting mailings. It was also pointed out that the meeting schedule/calendar would need to be publicized in the media or sent to other organizations, such as the companies and associations, who can help to get the meeting notices out.

ACTION ITEM: Chairperson Swain indicated he would take these suggestions under advisement.

There was also discussion regarding the requirement for having monthly full commission meetings, and Doreen **Thompson, General Counsel**, clarified that according to Title 31 of the DCMR meetings of the full commission are to be on Wednesday of January, March, May, July, September and November at 10:00 a.m., at the official offices of the Commission, or any other location the Chairperson may designate.

7. **Reported Impending Abolishment of the Commission & Current Reimbursement of Commissioners**

There was discussion of a recent newspaper article which indicated that Mayor Fenty is considering a drastic change to the role of the “much maligned D.C. Taxicab Commission.” **Commissioner Baker** stated that while this may be the end of the Taxicab Commission---since there has been discussion about it and the media has editorialized about it--- his participation at the Commission has been a public service and expressed his concern that the Commission not go away in disarray.

Commissioner Allen pointed out that Commissioners need to do better public relations jobs. She stated that one fallacy which has been perpetuated and needs to be corrected is the idea that the Commission was required to make a decision on meters as opposed to the reality, which is that the Commission decided to make a recommendation to the Mayor regarding meters with the final decision resting with the Mayor.

Commissioner Travis expressed concern that the Commissioners want to be a part of the decision on Time and Distance meters but the Chairman has indicated that responsibility for implementation was given to him by the Mayor even though the DC Code gives the Commission this responsibility.

Comments by the Public

Public participants raised issues such as:

- The illegal driver situation has gotten intolerable. Illegal competition from limousines, outside buses and vans has made it difficult to make a living;
- The Commission’s response when enforcement concerns are raised is that it has only five inspectors. However, before the Commission

1 was established 20 years ago, the police department conducted the
 2 hack inspections with only four or five police assigned to this
 3 responsibility, and we did not have problems with illegal drivers;
 4

- 5 • Why has there not been an increase the Commissioner's pay---can
 6 the Commission vote for an increase?
 7
- 8 • **ACTION ITEM**: Cab drivers need to be familiar with the
 9 complaint process in order to talk to the public and to share it with
 10 them; and
 11
- 12 • The Commission's Office needs to have enough people to answer
 13 the phone and provide services required by the industry.
 14

15 **8. COG Meetings and Reciprocity Agreements**

16
 17 **Chairperson Swain** indicated that: (a) the major topic of discussion at the
 18 Regional Taxicab Administrators meeting is reciprocity agreements; (b) the
 19 District does not have a reciprocity agreement with Prince George's County
 20 where the National Harbor goes into operation on April 8, 2008; (c) the
 21 COG meetings are public meetings and drivers should participate and make
 22 their opinions known; and (d) he raised the issue of access by District
 23 licensed taxicabs to passenger pick-up at Dulles at the COG meeting.
 24

25 In response to comments that Virginia and Maryland taxicabs are operating
 26 in the District and have contracts with District firms, (specifically Clifford
 27 Chance), **Doreen Thompson, General Counsel**, stated that section 828 of
 28 Title 31 allows taxicabs, properly licensed in Arlington County, Fairfax
 29 County or the City of Alexandria, Virginia or Montgomery County in
 30 Maryland, to pick up passengers in the District of Columbia, under certain
 31 circumstances. Public participants responded that there were no public
 32 hearings when section 828.
 33

34 35 **9. Commissioners Involvement in the Commission's Budget**

36
 37 Commissioners discussed not having any involvement in the budget process
 38 As a result of involvement in the budget process in the past some
 39 commissioners are of the belief that there is a requirement set out in 31
 40 DCMR for their involvement in the Office's budget process. [Note there is
 41 a requirement at DC Code section 50-320 that each year the Commission
 42 shall submit a plan for the use of all monies in the (Assessment) Fund.]
 43
 44

45 **C. GAS SURCHARGE**

46
 47 A public participant raised the issue of the need for a gas surcharge.
 48 **Chairperson Swain** provided the Commissioners with the Weekly Gas

1 Report (prepared by Commission staff based on American Automobile
 2 Association (AAA and the Lundberg Report) statistics and projections)
 3 which shows the average price for regular gasoline in the District of
 4 Columbia from 2004-2007. **Commissioner Carter** moved that the
 5 Commission consider an emergency gas surcharge of \$1.00 for 60 days.
 6 He indicated that he also receives these AAA reports and that the prediction
 7 is that the per barrel price will be \$100.00 by the end of the year which
 8 would push the average price close to \$3.30, \$3.40 a gallon.
 9 **Commissioner Allen** seconded the motion but stated that since the price of
 10 gas fluctuates, the Commission needs to add some language that if the price
 11 falls below a certain point, the surcharge can be removed and that the
 12 Commission's General Counsel could craft language to address this.

13
 14 In response, **Doreen Thompson, General Counsel** responded that the
 15 language is fine; however the way that this would be challenging. She
 16 added that the figures which the Commission staff collects are the prices for
 17 each Monday and that they are in a constant fluctuation. The Commission
 18 would have to decide what figure would trigger removal of the surcharge.
 19 She also shared with the Commission that as to the amount of the surcharge,
 20 the Commission has to determine a reasonable basis for why it has selected
 21 the amount of the surcharge, looking at the Gas Price History Reported
 22 presented to the Commission.

23
 24 **Commissioner Tapscott** pointed out that Title 31 states that, every two
 25 years, the Commission needs to look the taxicab industry's overall operating
 26 costs, which have all increased since the last permanent rate increase in
 27 January 2006. He also questioned the amount of the surcharge.
 28 **Commissioner Allen** responded that the surcharge is needed immediately
 29 and by April 2008 there will be a new system

30
 31 **VOTE TAKEN:**

32 The Commissioners unanimously voted for a \$1.00 fuel surcharge for a 60
 33 day period with **Commissioner Tapscott** voting yes with reservations.

35
 36 **D. ADJOURNMENT**

37
 38 **VOTE TAKEN:** **Commissioner Carter** moved to adjourn the meeting
 39 which was seconded by **Commissioner Travis**, whereupon the meeting
 40 was adjourned at
 41 at 1:33 pm.